IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.706 OF 2007

Smt.Mahananda Siddeshwar ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.V.V.Purwant, Adv. for the Applicant.
Mr.S.S.Pednekar, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 28th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in C.R. No.3001 of 2007 of Jail Road Police Station, Solapur. The said case is under Section 20(b) of the NDPS Act.

3. It is the prosecution case that when the police took search of the house of the applicant they found 20 Kgs. of ganja in the house. The applicant was present in her house at that time. The learned APP has stated that the quantity of ganja found in the house of the applicant was commercial quantity.

4. Mr.Purwant, the learned Advocate for the applicant has submitted that exactly 20 Kgs. of ganja was found in the house of the applicant. He has submitted that in view of Section 2(viia), "commercial quantity" in relation to narcotic drugs and psychotropic substances, means any quantity "greater" than the quantity specified by the Central Government by notification in the Official Gazette. Thus, he submitted that only if the quantity is greater than 20 Kgs., it would fall under the category of Commercial Quantity and quantity of exactly 20 Kgs. would not fall under Commercial Quantity. He submitted that in such case rigours of Section 37 of NDPS Act will have no application. In support of his contention, he has placed reliance on the decision of this Court in Criminal Application No.4655 of 2004 dated 23rd November, 2004 (Mohd.Isak Inamullah Khan Vs. State of Maharashtra). I have perused the said decision. In the said decision, the accused was found in possession of exactly one Kg. of Charas. The argument was advanced that one kg. of Charas cannot be said to be of commercial quantity and hence section 37 would have no application. However, in the said decision it is seen that coaccused had earlier been granted bail. The case of the coaccused was the same as the applicant

therein. Moreover, in the case of the coaccused in the said case, this Court had expressed doubt about as to what transpired on previous date. Hence on this ground, the applicant in above case came to be released on bail.

5. In the present case, it is seen that the applicant is found in possession of 20 Kgs. of ganja. Even if it is held that the said quantity does not fall under the category of commercial quantity, it does not mean that only on that ground the accused has to be released on bail. The said section gives discretion to the Court to grant bail in cases which do not fall under "commercial quantity".

6. Mr.Purwant has further submitted that the applicant is a lady. Hence, looking to these grounds, the applicant may be released on bail.

7. In the present case, the applicant has been in custody since 2.1.2007. The material on record clearly shows that she was found in possession of 20 Kgs. of ganja. In this view of the matter, application is rejected. The trial is expedited. The trial Court to decide the trial by 31st January, 2008.

(SMT.V.K.TAHILRAMANI,J.)